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No. 07-728

IN THE

SUPREME COURT

OF THE

UNITED STATES

CHARLOTTE SPADARO, Petitioner,

v.

CITY OF RIALTO, CALIFORNIA, Respondent.

On Petition for a Writ of Certiorari

to the Supreme Court of California

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* BY JON ROLAND OF THE CONSTITUTION SOCIETY

IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

Pursuant to Rule 37.2 (b) of this Court, Movant requests leave to file the accompanying brief of amicus curiae, in support of the Petition for writ of certiorari. All parties were timely notified of the intent to file this brief, under Rule 37.2 (a). Petitioner consented. Respondent withheld consent.

Our group, The Constitution Society, is dedicated to research and education on the principles of Constitutional republican government.

This is a significant case, a case which is of great interest to all those who care about Constitutional protections.

Our group is committed to protecting the Constitution for all citizens. We submit that our dedication and expertise is of value in this case.

Respectfully submitted,

Jon Roland
President and Founder,
The Constitution Society

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Interest of *Amicus Curiae*

This *amicus curiae* brief is submitted in favor of this Court granting review for Petitioner.[1] Review in this case will serve to protect our citizens' Constitutionally guaranteed property rights.

Our group, The Constitution Society, is a private, non-profit organization dedicated to research and public education on the principles of Constitutional republican government. We publish documentation, engage in litigation, and organize local citizens groups to work for reform.

Our organization was formed in response to the growing concern that noncompliance with the Constitution of the United States is creating a crisis of legitimacy that threatens freedom and civil rights.

Reasons for Granting the Petition

a. Due Process

Due process is a Constitutional guarantee and this Court has found that the right of citizens to due process cannot be legislated away.

> "With faithfulness to the constitutional union of the States, we cannot leave to the

[1]Notice of intent to file this brief was timely received by all parties under Rule 37.2 (a). Petitioner consented and Petitioner participated in the writing of this brief. Respondent withheld consent. No monetary contribution has been made but Petitioner paid the printer.

States the formulation of authoritative laws, rules and remedies designed to protect people from infractions by the States of federally guaranteed rights." *Chapman v. California* 386 US 18 (1967)

"It is manifest that it was not left to the legislative power to enact any process which might be devised. The (due process) article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave congress free to make any process 'due process of law,' by its mere will." *Murray v. Hoboken Land* 59 US 272 (1855)

A State may govern in its own way "unless in doing so it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts* 291 US 97 (1934)

Yet, Petitioner shows how America's pet owners still face the permanent deprivation of their cherished animals upon merely a showing of probable cause, with the State Courts allowing State politicians to legislate this as the process due. A clear, direct decision of this Court is needed to end this once and for all, nationally.

b. Deprivation

The deprivation of property requires due process, beyond mere probable cause. A decision of

this Court is needed to assert the fundamental differences between the probable cause elements of the Fourth Amendment and the due process clauses of the Fifth and Fourteenth Amendments, as they relate to the seizure and deprivation of people's property.

In *Connecticut v. Doehr*, 501 US 1 (1991), this Court found that a showing of probable cause is insufficient to satisfy due process in situations of deprivation, even in situations of temporary or partial impairment to property rights.

This Court found that a hearing of probable cause alone presents too great a risk of erroneous deprivation.

Petitioner appeals a State Court decision which provides only a hearing of what the seizing officer believed, as opposed to a hearing on the actual facts in light of all the evidence presented. Petitioner appeals a decision which permits a finding of liability upon only that belief of the seizing officer, rather than on any actual adjudicated responsibility.

> Attachment "merely because the plaintiff believes the defendant is liable ... would permit the deprivation of the defendant's property when the claim would fail to convince a jury ... The potential for unwarranted attachment in these situations is self-evident, and too great to satisfy the requirements of due process absent any countervailing consideration." *Connecticut v. Doehr*, supra.

In *United States v. James Daniel Good Real Property et al*, 510 US 43 (1993), the government agency argued that compliance with the Fourth Amendment suffices when the government seizes property for law enforcement purposes. This Court disagreed.

This Court found that the due process clauses of the Fifth and Fourteenth Amendments govern.

"The seizure of property implicates two 'explicit textual sources of constitutional protection,' the Fourth Amendment and the Fifth' ... The question is not which Amendment controls but whether either Amendment is violated." Ibid.

This Court found that the Fourth Amendment was tailored explicitly for the criminal justice system and that its initial protections are "only the first stage of an elaborate system". Ibid.

This Court found that the Fourth Amendment is not the beginning and end of Constitutional inquiry into seizure. This Court found that when the government seizes property not to preserve evidence but to assert ownership and control over the property itself, the government action must comply not only with the Fourth Amendment but with the due process clause.

This Court found, "Though the Fourth Amendment places limits on the Government's power to seize property for purposes of forfeiture, it does not provide the sole measure of constitutional protection

that must be afforded property owners in forfeiture procedures." Ibid.

This Court noted that the purpose of the forfeiture statute in question in that case was not to "deprive innocent owners of their property." Ibid.

This Court criticized the procedure in that case for offering "little or no protection to the innocent owner" and further criticized the procedure insofar as the "judge need determine only that there is probable cause to believe" the claim and that the government "is not required to offer any evidence on the question of innocent ownership or other potential defenses a claimant may have." Ibid.

This Court found that "even if the ultimate judicial decision is that the claimant was an innocent owner", still this "would not cure the temporary deprivation that an earlier hearing might have prevented." Ibid.

Petitioner asserts that, in her case, there is not even any further hearing provided for an ultimate judicial determination beyond the probable cause hearing.

Thus, a decision is needed from this Court to protect the rights of innocent pet owners, from the erroneous deprivation of their beloved animals.

This Court found in *Giaccio v. Pennsylvania* 382 US 399 (1966) that due process must be met whether the action is penal or civil, and that due process is violated by the government imposing the

costs of prosecution upon an individual not found to be guilty, criticizing a law which provided the State with a "procedure for depriving an acquitted defendant of his liberty and his property".

c. Fundamental Fairness

This case is about the fundamental fairness of procedural due process.

"Due process of law requires that the proceedings shall be fair" *Snyder v. Massachusetts*, supra.

Petitioner appeals the opinion of the California Court which wrote, "Procedural due process is satisfied by affording the owner or keeper of the animal notice and an opportunity to be heard on the validity of the seizure of the animal" which they define as the "reasonableness of the officer's belief that seizure was necessary" as opposed to whether "the animal's actual condition" justified the action.

The reasonableness of the officer's belief is a question under the Fourth Amendment.

Procedural due process is a question under the Fourteenth Amendment.

The California Court's opinion is that compliance with the Fourth Amendment satisfies due process, exactly the argument of the government agency in *United States v. James Daniel Good Real*

Property et al, supra. Again, this Court disagreed with the government's argument in that case and found that compliance with the Fourth Amendment is not enough. Again, this Court found in *Connecticut v. Doehr*, supra, that attachment "merely because the plaintiff believes the defendant is liable ... would permit the deprivation of the defendant's property when the claim would fail to convince a jury".

Due process requires a fair test and the test of probable cause is not a full, fair test. The test of probable cause is not enough, as this Court found in *Connecticut v. Doehr*, supra, and *United States v. James Daniel Good Real Property et al*, supra. This Court found that the test of probable cause is inherently an incomplete test, only a first step, which must not be confused with the fairness required by due process.

The test of probable cause, or the reasonableness of the officer's belief, is inherently a biased test, in favor of the officer. The test of probable cause is only the officer's belief tested against a pre-existing standard of reasonableness. The test of probable cause does not go further, to test the officer's belief against the actual facts of the case in light of all the evidence presented.

Almost all individuals accused of crimes in which the Courts confer upon them probable cause hearings will be held over to trial, the burden of probable cause almost always met by the State. A great many of these accused will be found not guilty. The Court will have found probable cause but will not have found any guilt. For all these accused,

probable cause was obviously not a full, fair test. It was only the first test.

d. A Decision in this Case is Needed

Petitioner's questions of the case are significant. While certain procedures may vary among situations, Petitioner asks what basic fundamentals of a fair hearing are invariable and Constitutionally guaranteed for all hearings on deprivation of property.

The prior decisions of this Court provide a clear direction for a decision in this case. This Court has specifically found that the tests of the Fourth Amendment, tests of probable cause and the reasonableness of an officer's belief, are not full, fair tests which satisfy due process.

But, when this Court acts, and the State Courts do not heed, the work of this Court is not done.

A decision of this Court is needed to assert what elements of a fair hearing are requisite to any hearing upon deprivation, such as the deprivation of people's animals.

A decision in this case is needed because, obviously, the prior decisions of this Court have not prevented the legislatures and Courts of more than one State from ignoring Constitutional due process protections in the matter of the deprivation of people's animals.

A decision in this case is needed because conflict still persists among the State Courts on this federal, Constitutional issue.

The States may continue to deny United States citizens their Constitutional protections unless a clear, direct decision of this Court asserts what process is due at such hearings. This Court must not allow its decisions to be defied by the States. Fundamental fairness is what is at stake.

This Court found in *Murray v. Hoboken Land*, supra, that legislators may not "make any process 'due process of law,' by its mere will." Yet, more than one State's Courts have allowed their legislators to make the test of probable cause the test of due process, in direct defiance of this Court's findings in the cases we cite. The work of this Court is not done.

Our founding father, Thomas Jefferson, once famously remarked, "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."

We hope that Jefferson's words are not literally true. We hope that no blood need yet be shed for our liberties.

The history of our republic has shown, though, that Jefferson's words have been at least metaphorically true, for the fight to maintain our liberties has been continuous.

Our Constitutional protections are threatened repeatedly by the slide of complacency, by agencies who think they can cut corners because they trust themselves in spite of the Constitution, by the acceptance of a few injustices along the way, that it is only one person's dog, one person's liberty, one person's life.

Our Constitution is a living document, because it lives in us, because we stand up for it and fight for it. When we stop fighting for it, it becomes nothing more than a piece of paper.

What Jefferson understood is that the Constitution will live on only if we always fight for it.

Every time our Constitution is threatened, the patriots in our streets and on our Courts must be there to fight for it. It is why this case is so important. It is why the Supreme Court still, and always, matters.

Respectfully submitted,

Jon Roland
President and Founder,
The Constitution Society